



DEPARTMENT OF THE ARMY

U.S. Army Corps of Engineers  
WASHINGTON, D.C. 20314-1000

REPLY TO  
ATTENTION OF:

CEPR-ZA (715)

25 FEB 2002

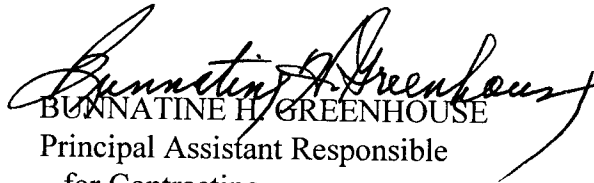
MEMORANDUM FOR COMMANDER/DIRECTORS, ALL USACE COMMANDS,  
ATTN: DIRECTOR/CHIEFS OF CONTRACTING

SUBJECT: PARC Instruction Letter 2002-02, Buy American Act and Berry Amendment  
Restrictions on the Procurement of Military Clothing and Related Items

1. Reference enclosed Memorandum dated 14 February 2002, SAB.
2. This PARC Instruction Letter 2002-02 is issued to reemphasize the compliance with the Buy American Act and Berry Amendment pursuant to referenced memorandum and its Enclosures 1 and 2.
3. It is imperative that USACE solicitations and resulting contracts for military clothing and related items contain the required clauses and provisions for the Buy American Act, as implemented by Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 225.1 and the Berry Amendment, as implemented by DFARS Subpart 225.7002. Further, Contracting Officers are responsible for following all applicable laws, regulations, and policies during the pre-award and post-award acquisition process.
4. The POC for this action is Sylvia J. Moody, CEPR-P, 202-761-4700, e-mail: [sylvia.j.moody@hq02.usace.army.mil](mailto:sylvia.j.moody@hq02.usace.army.mil).

FOR THE COMMANDER:

Encls

  
BUNNATINE H. GREENHOUSE  
Principal Assistant Responsible  
for Contracting



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY  
ACQUISITION LOGISTICS AND TECHNOLOGY  
103 ARMY PENTAGON  
WASHINGTON DC 20310-0103



REPLY TO  
ATTENTION OF

14 FEB 2002

SAAL-PP

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Buy American Act and Berry Amendment Restrictions on the  
Procurement of Military Clothing and Related Items

The following references provide information relating to the Buy American Act and the Berry Amendment.

- a. Office of the Inspector General, Department of Defense (DoDIG) Report Number 99-023, Procurement of Military Clothing and Related Items by Military Organizations, October 29, 1998.
- b. The DoDIG Project No. D2001CH-0046 (draft), Buy American Act Issues on Procurements of Military Clothing, November 7, 2001.
- c. Title 41, United States Code (U.S.C.), Section 10a (and following sections), the Buy American Act.
- d. Public Law 107-107, National Defense Authorization Act for Fiscal Year 2002, December 28, 2001, specifically Section 832, Codification and Modification of Provision of Law Known as the "Berry Amendment," to be permanently codified as Title 10, United States Code (U.S.C.), Section 2533a (previously 10 U.S.C. Section 2241 note).
- e. Memorandum, Director, Defense Procurement, March 2, 1999, subject: Compliance with the Buy American Act and Other Statutory Restrictions on Foreign Acquisition (Enclosure 1).
- f. Memorandum, Deputy Secretary of Defense, May 1, 2001, subject: The Berry Amendment (Enclosure 2).


References a. and b. (DoDIG reports) have identified several Army violations of statutory restrictions on procurement of military clothing and related items. These restrictions come from reference c., the Buy American Act, as implemented by Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 225.1, and reference d., the Berry Amendment, as implemented by DFARS Subpart 225.7002.



It is imperative that Army solicitations and resulting contracts for military clothing and related items contain the required clauses and provisions. Furthermore, contracting officers are responsible for following all applicable law, regulation, and policy during source selection, award, and contract administration. The direction to all contracting officers contained in the reference e. memorandum (Enclosure 1) remains valid. Furthermore, the Army must comply with the procedures of the reference f. memorandum (Enclosure 2).

To properly address this continuing problem, increased emphasis must be placed on compliance with the Buy American Act and Berry Amendment as part of the contracting process. Future DoDIG reviews on the subject must show a marked improvement by Army procurement offices.

My point of contact is Mr. Charles Riley, commercial 703-681-6700; DSN 761-6700; or e-mail [charles.riley@saalt.army.mil](mailto:charles.riley@saalt.army.mil).

  
For Claude M. Bolton, Jr.  
Army Acquisition Executive

Enclosures

DISTRIBUTION:

PRINCIPAL ASSISTANTS RESPONSIBLE FOR CONTRACTING  
HQ, U.S. Army Materiel Command, ATTN: AMCRDA-AC (PARC),  
5001 Eisenhower Avenue, Alexandria, VA 22333-0001  
U.S. Army Aviation and Missile Command, ATTN: AMSAM-AC,  
Building 4488, Redstone Arsenal, AL 35898-5000  
U.S. Army Robert Morris Acquisition Center, ATTN: AMSSB-AC,  
4118 Susquehanna Avenue, Aberdeen Proving Ground, MD 21005-5002  
U.S. Army Communications-Electronics Command, ATTN: AMSEL-AC,  
Building 1208E, Fort Monmouth, NJ 07703-5000  
U.S. Army Operations Support Command, ATTN: AMSOS-CC, Building 350,  
5<sup>th</sup> Floor, NW Wing, Rock Island, IL 61299-6000  
U.S. Army Tank-automotive and Armaments Command, ATTN: AMSTA-AQ,  
Building 231, Warren, MI 48397-5000  
Defense Contracting Command-Washington, 5200 Army Pentagon,  
Washington, DC 20310-5200  
Headquarters Forces Command, ATTN: AFLG-PR, 1777 Hardee Avenue  
S.W., Fort McPherson, GA 30330-1062

**DISTRIBUTION: (CONT)**

Third United States Army/U.S. Army Forces Central Command, 1881 Hardee Avenue, S.W., Fort McPherson, GA 30330-1064  
U.S. Army Medical Command, ATTN: MCAA, Building 2792, Suite 32, 2050 Worth Road, Fort Sam Houston, TX 78234-5069  
U.S. Army Intelligence and Security Command, ATTN: IAPC, 8825 Beulah Street, Fort Belvoir, VA 22060-5246  
U.S. Army Medical Research and Materiel Command, ATTN: MCMR-AAZ-A, 820 Chandler Street, Fort Detrick, MD 21702-5014  
U.S. Army Military District of Washington, Fort Lesley J. McNair, ATTN: ANPC 103 Third Avenue SW, Building 39, Room 5B, Fort Lesley J. McNair, DC 20319-5058  
Military Traffic Management Command, ATTN: MTAQ, Hoffman Building II, 200 Stovall Street, Alexandria, VA 22332-5000  
U.S. Army Space and Missile Defense Command, ATTN: SMDC-CM (PARC), P.O. Box 1500, Huntsville, AL 35807-3801  
U.S. Army Training and Doctrine Command, DCSBOS, ATTN: ATBO-A, 5 North Gato Road, Building 5F, Room 306, Fort Monroe, VA 23651-1048  
U.S. Army Contracting Command, Europe, ATTN: AEAPR-PA (PARC), Unit 29331, APO AE 09266  
Headquarters, Eighth United States Army, ATTN: FKAQ/EAAQ, Unit 15237, APO AP 96205-0010  
U.S. Army, Pacific, ATTN: APAM, B Street, Building T-115, Fort Shafter, HI 96858-5100  
U.S. Army South, ATTN: PARC, P.O. Box 34000, Building 223, Fort Buchanan, PR 00934  
U.S. Army Corps of Engineers, ATTN: CEPR-ZA, 441 G Street, NW, Washington, DC 20314-1000  
National Guard Bureau, ATTN: NGB-AQ, Suite 8300, Jefferson Plaza 1, 1411 Jefferson Davis Highway, Arlington, VA 22202-3231

**CF:**

Deputy Assistant Secretary of the Army for Financial Operations, Pentagon, Room 3E588, Washington, DC 20310-0103  
Assistant Deputy Chief of Staff for Research, Development and Acquisition (Acquisition, Contracting and Program Management), HQ, U.S. Army Materiel Command, ATTN: AMCRDA-A, 5001 Eisenhower Avenue, Alexandria, VA 22333-0001  
Chief, Contract Policy Team, Headquarters, U.S. Army Materiel Command, ATTN: AMCRDA-AP, 5001 Eisenhower Avenue, Alexandria, VA 22333-0001  
Chief, Program Management and Acquisition Support Office, Headquarters, U.S. Army Materiel Command, ATTN: AMCRDA-AM, 5001 Eisenhower Avenue, Alexandria, VA 22333-0001



ACQUISITION AND  
TECHNOLOGY

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

March 2, 1999

DP/FC

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES  
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT, ASN(RD&A)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING), SAF/AQC  
DEPUTY ASSISTANT SECRETARY OF THE ARMY (PROCUREMENT), ASA(RD&A)  
COMMANDER, DEFENSE CONTRACT MANAGEMENT COMMAND

SUBJECT: Compliance with the Buy American Act and Other Statutory  
Restrictions on Foreign Acquisition

I am concerned by the findings of the recent audit report by the Office of the Inspector General, DoD (OIG), Project No. 8CH-5001, *Procurement of Military Clothing and Related Items by Military Organizations*, that concludes that certain Department of Defense procurements during Fiscal Years 1996 and 1997 did not comply with the requirements of the Buy American Act (41 U.S.C. 10a et seq.), implemented at Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 225.1, or the Berry Amendment (10 U.S.C. 2241, note), implemented at DFARS Subpart 225.7002. Nearly half of the solicitations and contracts examined by the OIG were found not to have incorporated or enforced the required relevant provisions or clauses prescribed by the DFARS for these statutes.

Please ensure that contracting officers review and comply with, the requirements of the Buy American Act and the Berry Amendment. Except as specifically provided in the Act or in DFARS Subpart 225.1, contracting officers must apply the requirements of the Buy American Act to supply contracts exceeding the micro-purchase threshold and to service contracts that involve furnishing of supplies when the supply portion exceeds the micro-purchase threshold. Except as specifically provided in the statute or DFARS Subpart 225.7002, contracting officers must apply the Berry Amendment to actions at or above the simplified acquisition threshold. These restrictions also apply to orders placed under a Federal Supply Schedule (FSS) contract. The General Services Administration (GSA) is not subject to the Berry Amendment and, therefore, does not impose the requirements of the Berry Amendment in a FSS contract. Contracting officers shall not place orders under an FSS contract if the procurement would fail to comply with either the Buy American Act or the Berry Amendment.

Eleanor R. Spector  
Director, Defense Procurement



ENCL 2



THE DEPUTY SECRETARY OF DEFENSE  
WASHINGTON, D.C. 20301-1000



MAY 1 2001

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR  
ACQUISITION, TECHNOLOGY AND LOGISTICS  
SECRETARY OF THE ARMY  
SECRETARY OF THE NAVY  
SECRETARY OF THE AIR FORCE

SUBJECT: The Berry Amendment

The Berry Amendment (10 U.S.C. 2241, note) provides in part that, "No part of any appropriation or other funds available to the Department of Defense, except for purchases for amounts not greater than the simplified acquisition threshold covered by section 2304(g) of Title 10 United States Code, shall be available for the procurement of any article or item of food, clothing, tents, tarpaulins, covers, cotton and other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric, canvas products, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles), or any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials, or specialty metals including stainless steel flatware, or hand measuring tools, not grown, reprocessed, reused or produced in the United States or its possessions, except to the extent that the Secretary of the Department concerned shall determine that satisfactory quality and sufficient quantity of any articles or items of food, individual equipment, tents, tarpaulins, covers, or clothing or any form of cotton or other natural fiber products, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric, canvas products, wool, or specialty metals including stainless steel flatware, grown, reprocessed, reused, or produced in the United States or its possessions cannot be procured as and when needed at United States market prices and except procurements outside the United States in support of combat operations."

Effective immediately, your authority to make determinations in accordance with the Berry Amendment may not be redelegated. Any existing redelegations are hereby rescinded. Furthermore, prior to making any determination to waive the requirements of the Berry Amendment, you must present the requiring activity with alternatives that would not require a waiver under the Berry Amendment. Only after the requiring activity certifies, with specificity, in writing why such alternatives are unacceptable and you agree, may you make the necessary Berry Amendment determinations.

*Paul Wolfowitz*

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